

# **EXHIBIT H**

Emails between Plaintiffs and Moving Defendants, dated  
January 12, 2023

**Van Gelder, Amy (CHI)**

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**From:** Mascherin, Terri L. <TMascherin@jenner.com>  
**Sent:** Thursday, January 12, 2023 5:08 PM  
**To:** Ted Normand  
**Cc:** Peter Bach-y-Rita; Richard Cipolla; Van Gelder, Amy (CHI); Kirkpatrick, Sarah; Holt, Benjamin F.; Stein, Scott D.; Roellke, Jon R.; Kaufman, Noah J.; Fitzgerald, Patrick (CHI); Loughlin, Chuck; Lent, Karen Hoffman (NYC); Litvack, Douglas E.; Steinhauer, Holden A.; Bhabha, Ishan K.; Carlson, Kathleen; Hartz, Lauren J.; Powell, Lina R.; Bernescu, Laura (CHI); Fitzsimmons, Garrett S.; Brunner, Benjamin; Carlson, Casey L.M.; 568 Litigation  
**Subject:** [Ext] RE: 568 Meet & Confer re Exemption Defense

Ted, et al.:

Thank you for your email. Unfortunately, as we read your proposal, you are not offering much relief from the scope and burden issues that we have identified in our discussions with you regarding our clients' decisions to drop the Section 568 defense. In particular, in item 4 of your proposal, you seek to have these six defendants produce documents in response to 37 of the 71 RFPs that we identified to you as no longer relevant because they relate solely to issues concerning the Section 568 defense. Those RFPs include, among other things, requests for all documents concerning these Defendants' formal and informal admissions policies and practices, all documents concerning enrollment management, all documents concerning consideration of family income or family wealth in any way in admissions decisions, and substantial records from these Defendants' development office or development databases. Given the decision by these six Defendants not to rely upon the Section 568 exemption, this discovery is grossly disproportionate. We are also concerned by your reservation of the right, in the future, to seek all of the admissions related data and documents that you are seeking from the other Defendants. In short, we do not believe this proposal addresses the disproportionality concerns that we have raised with you.

In our calls yesterday and on January 4, you had suggested that you were thinking along the lines of proposing some form of limited testimony combined with written discovery in place of the RFPs that we identified to you last week. We would give serious consideration to an approach like that. But we cannot agree to the much more extensive proposal outlined in your email.

At the end of our call yesterday, we understood that you would send us this morning your bottom line proposal. Given that, unfortunately, it appears we are at impasse.

Regards,  
Terri

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**From:** Ted Normand <tnormand@fnf.law>  
**Sent:** Thursday, January 12, 2023 11:11 AM  
**To:** Mascherin, Terri L. <TMascherin@jenner.com>  
**Cc:** Peter Bach-y-Rita <pbachyrita@fnf.law>; Richard Cipolla <rcipolla@fnf.law>; Van Gelder, Amy <Amy.VanGelder@skadden.com>; Kirkpatrick, Sarah <SKirkpatrick@wc.com>; Holt, Benjamin F. <benjamin.holt@hoganlovells.com>; Stein, Scott D. <sstein@sidley.com>; Roellke, Jon R.

<jon.roellke@morganlewis.com>; Kaufman, Noah J. <noah.kaufman@morganlewis.com>; Fitzgerald, Patrick <Patrick.Fitzgerald@skadden.com>; Loughlin, Chuck <chuck.loughlin@hoganlovells.com>; Lent, Karen Hoffman <Karen.Lent@skadden.com>; Litvack, Douglas E. <DLitvack@jenner.com>; Steinhauer, Holden A. <Holden.Steinhauer@hoganlovells.com>; Bhabha, Ishan K. <IBhabha@jenner.com>; Carlson, Kathleen <kathleen.carlson@sidley.com>; Hartz, Lauren J. <LHartz@jenner.com>; Powell, Lina R. <LinaPowell@jenner.com>; Bernescu, Laura <Laura.Bernescu@skadden.com>; Fitzsimmons, Garrett S. <GFitzsimmons@jenner.com>; Brunner, Benjamin <bbrunner@sidley.com>; Carlson, Casey L.M. <CCarlson@Jenner.com>; 568 Litigation <568\_Litigation@fnf.law>

**Subject:** Re: 568 Meet & Confer re Exemption Defense

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Terri et al. –

With respect to the six Defendants' decision not to invoke the 568 Exemption in this case, and their related proposal to avoid or limit discovery of their admissions practices on that basis, Plaintiffs are entitled to all the same discovery as from other Defendants, for all the reasons set forth in our insert to the joint status report at pages 12-14. In the interest of compromise, however, we would be prepared to limit our discovery as follows:

1. Without waiving the right to seek full discovery of Defendants regarding their admissions practices (which the parties have been discussing for months) depending on the information disclosed in the limited discovery proposed below, Plaintiffs propose the limited discovery set out below.
2. The six Defendants agree to produce for deposition, by May 15, 2023, the following individuals for, in summary, the following reasons:
  1. Brown – Jim Tilton. Mr. Tilton is the Dean of Financial Aid (2006-Present) and the signatory to Brown's alleged "withdrawal" letter from the 568 Group (signed in his capacity as "Director of Financial Aid"), in which he wrote of Brown's need-aware practices for transfer students, and the 568 Group's not following need-blind requirements for waitlist students.
  2. Columbia – Lee Bollinger. President Bollinger's tenure began in 2002 and has lasted the entire duration of the class period. Per Columbia student reporting, aggressive (and at times controversial) fundraising have been the hallmarks of President Bollinger's tenure at Columbia.
  3. Dartmouth – Jeff Sassorossi. Mr. Sassorossi was Dartmouth's Director, Special Projects & Reporting (2010-2020). His role was "to serve as the liaison between the Advancement (Alumni Relations and Development) and Admissions." An email from Mr. Sassorossi to Sony CEO Michael Lynton was leaked following the 2014 Sony hack, illustrating Dartmouth's efforts to evaluate and court wealthy potential donors. If Mr. Sassorossi is no longer controlled by Dartmouth, Plaintiffs will subpoena the deposition of Mr. Sassorossi and not take other depositions of Dartmouth personnel subject to point 1 above.
  4. Northwestern – Morton Schapiro. President Schapiro has been described as "a dean of 'enrollment management,' the art of shaping an incoming class through recruitment, aid, early admission, waiting lists and other variables." As alleged in Para. 181 of the Second Amended Complaint, "in the 2018-19 admissions cycle, Schapiro personally reviewed the applications of about 550 students, including applications associated with wealthy donors." He has also been a spokesperson for the 568 Presidents Group.
  5. Notre Dame – Don Bishop. Mr. Bishop has publicly spoken regarding the relevance of donations in the admissions process and has been praised for his strategies in enrollment management. Mr. Bishop has acknowledged the significant influence that donations play in the Notre Dame admissions process. Indeed, he admitted that if someone gave \$15 million, then their children would be given "some special interest" during the Notre Dame admissions process.
  6. Yale – An administrator with personal knowledge of the facts reported in the article "Yale for Sale."

3. The six Defendants agree to make each of the foregoing individuals a custodian for purposes of Plaintiffs' pending Requests for the Production of Documents (or, in the case of Mr. Sassorossi, produce all relevant documents reasonably accessible to Dartmouth).
4. The six Defendants each produce, by April 1, 2023, documents responsive to Section II of Plaintiffs' First Set of Requests for Production, "Documents Concerning Donor Data," Nos. 20-23, and all documents responsive to Section IV, "Documents Specifically Pertaining to Each of the Defendants," that specifically mention the Defendants itemized in #2 above.

Please let us know by the end of today whether this proposal can reduce the burden on the Court arising from the joint status report.

Thanks.

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**From:** "Mascherin, Terri L." <[TMascherin@jenner.com](mailto:TMascherin@jenner.com)>

**Date:** Sunday, January 8, 2023 at 12:23 PM

**To:** Ted Normand <[tnormand@fnf.law](mailto:tnormand@fnf.law)>

**Cc:** Peter Bach-y-Rita <[pbachyrita@fnf.law](mailto:pbachyrita@fnf.law)>, Richard Cipolla <[rcipolla@fnf.law](mailto:rcipolla@fnf.law)>, "Van Gelder, Amy" <[Amy.VanGelder@skadden.com](mailto:Amy.VanGelder@skadden.com)>, "Kirkpatrick, Sarah" <[SKirkpatrick@wc.com](mailto:SKirkpatrick@wc.com)>, "Holt, Benjamin F." <[benjamin.holt@hoganlovells.com](mailto:benjamin.holt@hoganlovells.com)>, "Stein, Scott D." <[sstein@sidley.com](mailto:sstein@sidley.com)>, "Roellke, Jon R." <[jon.roellke@morganlewis.com](mailto:jon.roellke@morganlewis.com)>, "Kaufman, Noah J." <[noah.kaufman@morganlewis.com](mailto:noah.kaufman@morganlewis.com)>, "Fitzgerald, Patrick" <[Patrick.Fitzgerald@skadden.com](mailto:Patrick.Fitzgerald@skadden.com)>, "Loughlin, Chuck" <[chuck.loughlin@hoganlovells.com](mailto:chuck.loughlin@hoganlovells.com)>, "Lent, Karen Hoffman" <[Karen.Lent@skadden.com](mailto:Karen.Lent@skadden.com)>, "Litvack, Douglas E." <[DLitvack@jenner.com](mailto:DLitvack@jenner.com)>, "Steinhauer, Holden A." <[Holden.Steinhauer@hoganlovells.com](mailto:Holden.Steinhauer@hoganlovells.com)>, "Bhabha, Ishan K." <[IBhabha@jenner.com](mailto:IBhabha@jenner.com)>, "Carlson, Kathleen" <[kathleen.carlson@sidley.com](mailto:kathleen.carlson@sidley.com)>, "Hartz, Lauren J." <[LHartz@jenner.com](mailto:LHartz@jenner.com)>, "Powell, Lina R." <[LinaPowell@jenner.com](mailto:LinaPowell@jenner.com)>, "Bernescu, Laura" <[Laura.Bernescu@skadden.com](mailto:Laura.Bernescu@skadden.com)>, "Fitzsimmons, Garrett S." <[GFitzsimmons@jenner.com](mailto:GFitzsimmons@jenner.com)>, "Brunner, Benjamin" <[bbrunner@sidley.com](mailto:bbrunner@sidley.com)>, "Carlson, Casey L.M." <[CCarlson@Jenner.com](mailto:CCarlson@Jenner.com)>, 568 Litigation <[568\\_Litigation@fnf.law](mailto:568_Litigation@fnf.law)>

**Subject:** Re: 568 Meet & Confer re Exemption Defense

[EXTERNAL SENDER]

That works. Thanks.

Terri

On Jan 8, 2023, at 10:12 AM, Ted Normand <[tnormand@fnf.law](mailto:tnormand@fnf.law)> wrote:

**External Email - Do Not Click Links or Attachments Unless You Know They Are Safe**

Teri –

Copying in the larger group. I have to take a deposition all day on Tuesday, but we can get you our written response by COB on Tuesday, in time for us to discuss on Wednesday afternoon. How about 4 ET (3 CT)?

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**From:** "Mascherin, Terri L." <[TMascherin@jenner.com](mailto:TMascherin@jenner.com)>

**Date:** Friday, January 6, 2023 at 4:20 PM

**To:** Ted Normand <[tnormand@fnf.law](mailto:tnormand@fnf.law)>, Peter Bach-y-Rita <[pbachyrita@fnf.law](mailto:pbachyrita@fnf.law)>, Richard Cipolla <[rcipolla@fnf.law](mailto:rcipolla@fnf.law)>

**Cc:** "Van Gelder, Amy" <[Amy.VanGelder@skadden.com](mailto:Amy.VanGelder@skadden.com)>, "Van Gelder, Amy"

<[Amy.VanGelder@skadden.com](mailto:Amy.VanGelder@skadden.com)>, "Kirkpatrick, Sarah" <[SKirkpatrick@wc.com](mailto:SKirkpatrick@wc.com)>, "Holt, Benjamin F." <[benjamin.holt@hoganlovells.com](mailto:benjamin.holt@hoganlovells.com)>, "Stein, Scott D." <[sstein@sidley.com](mailto:sstein@sidley.com)>, "Roellke, Jon R." <[jon.roellke@morganlewis.com](mailto:jon.roellke@morganlewis.com)>, "Kaufman, Noah J." <[noah.kaufman@morganlewis.com](mailto:noah.kaufman@morganlewis.com)>, "Fitzgerald, Patrick" <[Patrick.Fitzgerald@skadden.com](mailto:Patrick.Fitzgerald@skadden.com)>, "Loughlin, Chuck" <[chuck.loughlin@hoganlovells.com](mailto:chuck.loughlin@hoganlovells.com)>, "Lent, Karen Hoffman" <[Karen.Lent@skadden.com](mailto:Karen.Lent@skadden.com)>, "Litvack, Douglas E." <[DLitvack@jenner.com](mailto:DLitvack@jenner.com)>, "Steinhauer, Holden A." <[Holden.Steinhauer@hoganlovells.com](mailto:Holden.Steinhauer@hoganlovells.com)>, "Bhabha, Ishan K." <[IBhabha@jenner.com](mailto:IBhabha@jenner.com)>, "Carlson, Kathleen" <[kathleen.carlson@sidley.com](mailto:kathleen.carlson@sidley.com)>, "Hartz, Lauren J." <[LHartz@jenner.com](mailto:LHartz@jenner.com)>, "Powell, Lina R." <[LinaPowell@jenner.com](mailto:LinaPowell@jenner.com)>, "Bernescu, Laura" <[Laura.Bernescu@skadden.com](mailto:Laura.Bernescu@skadden.com)>, "Fitzsimmons, Garrett S." <[GFitzsimmons@jenner.com](mailto:GFitzsimmons@jenner.com)>, "Brunner, Benjamin" <[bbrunner@sidley.com](mailto:bbrunner@sidley.com)>, "Carlson, Casey L.M." <[CCarlson@Jenner.com](mailto:CCarlson@Jenner.com)>

**Subject:** RE: 568 Meet & Confer re Exemption Defense

**[EXTERNAL SENDER]**

Thanks for your email, Ted. Do you think you can get us your proposal/response by noon CT on Tuesday? If so, we can be available on Wednesday afternoon to discuss it with you. Right now it appears that our group is available on Wed. any time except between 3:30 and 4:00 CT. Let me know what time on Wednesday would work for your team.

Have a good weekend,  
Terri

---

**From:** Ted Normand <[tnormand@fnf.law](mailto:tnormand@fnf.law)>

**Sent:** Friday, January 6, 2023 2:08 PM

**To:** Mascherin, Terri L. <[TMascherin@jenner.com](mailto:TMascherin@jenner.com)>; Peter Bach-y-Rita <[pbachyrita@fnf.law](mailto:pbachyrita@fnf.law)>; Richard Cipolla <[rcipolla@fnf.law](mailto:rcipolla@fnf.law)>

**Cc:** Van Gelder, Amy <[Amy.VanGelder@skadden.com](mailto:Amy.VanGelder@skadden.com)>; Van Gelder, Amy <[Amy.VanGelder@skadden.com](mailto:Amy.VanGelder@skadden.com)>; Kirkpatrick, Sarah <[SKirkpatrick@wc.com](mailto:SKirkpatrick@wc.com)>; Holt, Benjamin F. <[benjamin.holt@hoganlovells.com](mailto:benjamin.holt@hoganlovells.com)>; Stein, Scott D. <[sstein@sidley.com](mailto:sstein@sidley.com)>; Roellke, Jon R. <[jon.roellke@morganlewis.com](mailto:jon.roellke@morganlewis.com)>; Kaufman, Noah J. <[noah.kaufman@morganlewis.com](mailto:noah.kaufman@morganlewis.com)>; Fitzgerald, Patrick <[Patrick.Fitzgerald@skadden.com](mailto:Patrick.Fitzgerald@skadden.com)>; Loughlin, Chuck <[chuck.loughlin@hoganlovells.com](mailto:chuck.loughlin@hoganlovells.com)>; Lent, Karen Hoffman <[Karen.Lent@skadden.com](mailto:Karen.Lent@skadden.com)>; Litvack, Douglas E. <[DLitvack@jenner.com](mailto:DLitvack@jenner.com)>; Steinhauer, Holden A. <[Holden.Steinhauer@hoganlovells.com](mailto:Holden.Steinhauer@hoganlovells.com)>; Bhabha, Ishan K. <[IBhabha@jenner.com](mailto:IBhabha@jenner.com)>; Carlson, Kathleen <[kathleen.carlson@sidley.com](mailto:kathleen.carlson@sidley.com)>; Hartz, Lauren J. <[LHartz@jenner.com](mailto:LHartz@jenner.com)>; Powell, Lina R. <[LinaPowell@jenner.com](mailto:LinaPowell@jenner.com)>; Bernescu, Laura <[Laura.Bernescu@skadden.com](mailto:Laura.Bernescu@skadden.com)>; Fitzsimmons, Garrett S. <[GFitzsimmons@jenner.com](mailto:GFitzsimmons@jenner.com)>; Brunner, Benjamin <[bbrunner@sidley.com](mailto:bbrunner@sidley.com)>; Carlson, Casey L.M. <[CCarlson@Jenner.com](mailto:CCarlson@Jenner.com)>

**Subject:** Re: 568 Meet & Confer re Exemption Defense

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Terri –

We've been working through a few things this week, on our end, and plan to send a written proposal/response this coming Tuesday with the intent to have the parties orient their discussions around that.

Ted

---

**From:** "Mascherin, Terri L." <[TMascherin@jenner.com](mailto:TMascherin@jenner.com)>

**Date:** Friday, January 6, 2023 at 10:34 AM

**To:** Peter Bach-y-Rita <[pbachyrita@fnf.law](mailto:pbachyrita@fnf.law)>, Ted Normand <[tnormand@fnf.law](mailto:tnormand@fnf.law)>, Richard Cipolla <[rcipolla@fnf.law](mailto:rcipolla@fnf.law)>

**Cc:** "Van Gelder, Amy" <[Amy.VanGelder@skadden.com](mailto:Amy.VanGelder@skadden.com)>, "Van Gelder, Amy"

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<[CCarlson@Jenner.com](mailto:CCarlson@Jenner.com)>

**Subject:** RE: 568 Meet & Confer re Exemption Defense

[EXTERNAL SENDER]

Ted and team, does it make sense to talk again either today or early next week? Let us know what works. We'd like to see if we can make progress.

Thanks,

Terri

---

**From:** "Van Gelder, Amy" <[Amy.VanGelder@skadden.com](mailto:Amy.VanGelder@skadden.com)>

**Date:** Thursday, January 5, 2023 at 1:02 PM

**To:** 'Peter Bach-y-Rita' <[pbachyrita@fnf.law](mailto:pbachyrita@fnf.law)>, "'tnormand@fnf.law'" <[tnormand@fnf.law](mailto:tnormand@fnf.law)>, 'Richard Cipolla' <[rcipolla@fnf.law](mailto:rcipolla@fnf.law)>

**Cc:** "Kirkpatrick, Sarah" <[SKirkpatrick@wc.com](mailto:SKirkpatrick@wc.com)>, "Holt, Benjamin F." <[benjamin.holt@hoganlovells.com](mailto:benjamin.holt@hoganlovells.com)>,

"Stein, Scott D." <[sstein@sidley.com](mailto:sstein@sidley.com)>, "Roellke, Jon R." <[jon.roellke@morganlewis.com](mailto:jon.roellke@morganlewis.com)>, "Kaufman, Noah J."

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Lauren J." <[LHartz@jenner.com](mailto:LHartz@jenner.com)>, "Powell, Lina R." <[LinaPowell@jenner.com](mailto:LinaPowell@jenner.com)>, "Bernescu, Laura"

<[Laura.Bernescu@skadden.com](mailto:Laura.Bernescu@skadden.com)>, "Fitzsimmons, Garrett S." <[GFitzsimmons@jenner.com](mailto:GFitzsimmons@jenner.com)>, "Brunner,

Benjamin" <[bbrunner@sidley.com](mailto:bbrunner@sidley.com)>, "Carlson, Casey L.M." <[CCarlson@Jenner.com](mailto:CCarlson@Jenner.com)>

**Subject:** 568 Meet & Confer re Exemption Defense

**External Email - Do Not Click** Links or Attachments Unless You Know They Are Safe

Dear Counsel:

As follow up to our joint meet and confer yesterday concerning certain defendants' intent to drop the 568 Exemption defense, please find attached a list of RFPs and proposed search terms that we identified as relating, in whole or in part, to the 568 Exemption, and therefore would object to as irrelevant and disproportionate. We are available to discuss further at your convenience.

**Amy Van Gelder**  
Partner

**Skadden, Arps, Slate, Meagher & Flom LLP**

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Skadden

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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